

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

ANTHONY T. MITCHELL,

Defendant-Appellant.

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UNPUBLISHED

April 26, 2007

No. 269604

Wayne Circuit Court

LC No. 01-008165-01

Before: Cavanagh, P.J., and Jansen and Borrello, JJ.

PER CURIAM.

Defendant was convicted, following a bench trial, of carjacking, MCL 750.529a, and possession of a firearm during the commission of a felony, MCL 750.227b. The trial court sentenced defendant to serve consecutive terms of imprisonment of two years for felony-firearm, and five to ten years for carjacking. The court additionally ordered defendant to pay restitution in the amount of \$2,090. Defendant appeals as of right. For the reasons set forth in this opinion, we affirm.

This case arises from an incident that took place in Highland Park during the early morning hours of June 23, 2001. The owner of the car testified that he had stopped for gasoline when defendant approached with a gun, ordered the occupants out of the car, fired the gun, and proceeded to drive away in the car. The owner of the car identified defendant as the assailant at a police lineup as well as at trial. The two passengers confirmed the owner's account of the crime, including the identification of defendant as the culprit.

On the morning of June 25, 2001, a police officer spotted defendant standing outside the car in question, the sound system was playing very loud music. The officer testified that when he asked about the car, defendant stated that it was his own.

The trial court found defendant guilty as charged, expressly crediting the identification testimony of all three victims, and discounting the accuracy, if not the honesty, of alibi testimony from defendant's girlfriend.

On appeal, defendant challenges the sufficiency of the evidence to support his convictions, and the propriety of the award of restitution.

I. Sufficiency of the Evidence

When reviewing the sufficiency of evidence in a criminal case, we must view the evidence of record in the light most favorable to the prosecution to determine whether a rational trier of fact could find that each element of the crime was proved beyond a reasonable doubt. *People v Herndon*, 246 Mich App 371, 415; 633 NW2d 376 (2001). Review is de novo. *Id.*

Defendant expressly attacks the credibility of the witnesses who identified him as their assailant. However, “[c]redibility is a matter for the trier of fact to ascertain. We will not resolve it anew.” *People v Vaughn*, 186 Mich App 376, 380; 465 NW2d 365 (1990). Defendant emphasizes that the three victims were not entirely complete or consistent in their identifications. However, even where the witnesses’ identification of a defendant is less than positive, the question remains one for the factfinder. See *People v Abernathy*, 39 Mich App 5, 7; 197 NW2d 106 (1972). In this case, the three unequivocal identifications that the prosecutor presented, well supported the trial court’s conclusion in this regard.

Defendant additionally presents several cases and texts that recognize that there have been many wrongful convictions based on eyewitness identifications. We are mindful that eyewitness identification has not proved infallible, and presume that the court below shared this common understanding. See *People v Anderson*, 389 Mich 155, 172; 205 NW2d 461 (1973), overruled in part *People v Hickman*, 470 Mich 602, 611; 684 NW2d 267 (2004). Regardless, the accounts of a single eyewitness can suffice to prove a defendant’s guilt beyond a reasonable doubt. See *People v Newby*, 66 Mich App 400, 405; 239 NW2d 387 (1976); *People v Jelks*, 33 Mich App 425, 432; 190 NW2d 291 (1971). In this case there were three identifying eyewitnesses. Defendant’s arguments bear on the weight to be afforded to each, but do not establish that such identification is inherently inadequate as a matter of fact or law.

Moreover, the police found defendant in possession of the car involved in the carjacking two days after that event. This strong circumstantial evidence also linked defendant to the crime. See *People v Jolly*, 442 Mich 458, 466; 502 NW2d 177 (1993) (“Circumstantial evidence and reasonable inferences drawn therefrom may be sufficient to prove the elements of a crime.”)

For these reasons, we reject defendant’s challenge to the sufficiency of the evidence.

## II. Restitution

Defendant asks that we remand this case to the trial court for a reassessment of restitution. At sentencing, defense counsel asked how the amount for restitution was determined, and received the following answer from the trial court: “It’s \$120 for 12 tapes that were missing from the vehicle, \$1,200 to replace a damaged motor, \$500 to have his vehicle painted due to scratches, \$70 for the pair of shoes that was taken, and \$200 for a cell phone that was taken.” Defense counsel did not express disagreement with any of those figures, nor did defense counsel imply that any objection remained. In light of the lack of an objection below, our review of this issue is limited to ascertaining whether defendant suffered plain error affecting his substantial rights. See *People v Newton*, 257 Mich App 61, 68; 665 NW2d 504 (2003). A trial court’s factual findings are reviewed for clear error. MCR 2.613(C).

On appeal, defendant challenges the trial court’s figures only by pointing out that the trial testimony brought to light as missing from the car only a pair of shoes, a cell phone, and a hat. However, defendant cites no authority for the proposition that restitution can be determined only

on the basis of the evidence presented at trial. In fact, the Crime Victim's Rights Act<sup>1</sup> requires a trial court to order restitution as part of sentencing proceedings. MCL 780.766(2). Factual findings for sentencing purposes require a mere preponderance of the evidence. See *People v Ewing (After Remand)*, 435 Mich 443, 472-473; 458 NW2d 880 (Boyle, J., joined by Riley, C.J., and Griffin, J.) (1990). Information relied upon may come from several sources, including some that would not be admissible at trial. *People v Potrafka*, 140 Mich App 749, 751-752; 366 NW2d 35 (1985). See also MRE 1101(b)(3).

Because defendant appeared satisfied with the trial court's explanation of its restitution calculation at sentencing, and defendant fails to show that any of the court's conclusions in that regard are clear error on appeal, we conclude that the restitution order is neither plain error nor prejudicial to defendant's substantial rights.

Affirmed.

/s/ Mark J. Cavanagh  
/s/ Kathleen Jansen  
/s/ Stephen L. Borrello

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<sup>1</sup> MCL 780.751 *et seq.*